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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 JONATHAN W. GRIGSBY,)
10 Plaintiff(s),) No. C 09-0024 CRB (PR)
11 v.) ORDER OF DISMISSAL
12 FRANCISCO JACQUEZ, et al.,)
13 Defendant(s).)
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15 Plaintiff, a prisoner at Pelican Bay State Prison (PBSP) and frequent
16 litigant in federal court, has filed a pro se prisoner complaint under 42 U.S.C. §
17 1983 alleging that on or about August 1, 2005 prison officials used excessive
18 force against him and denied him medical care for the injuries he sustained.

19 Plaintiff raised the same allegations in a prior prisoner complaint, which
20 was dismissed for failure to exhaust available administrative remedies, as
21 required by 42 U.S.C. § 1997e(a). See Grigsby v. Castellan, No. C 06-5494 CRB
22 (PR) (N.D. Cal. Feb. 26, 2007) (order of dismissal). The dismissal was without
23 prejudice to filing a new action after exhausting California's prison administrative
24 process. See id.¹

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26 _____
27 ¹Plaintiff moved for reconsideration and appealed to the Ninth Circuit.
28 But his motion for reconsideration was denied and his appeal was dismissed for
failure to prosecute. See Grigsby v. Castellan, No. 07-17359 (9th Cir. Apr. 22,
2008) (order).

1 Plaintiff's new action is not premised on his having exhausted California's
2 prison administrative process since the court dismissed his first action on
3 February 26, 2007; rather, the new action is premised on his assertion that the
4 court's dismissal of his first action was wrong. This he should have raised on
5 appeal, and not in a new complaint.

6 A prisoner complaint that merely repeats pending or previously litigated
7 claims, as is the case here, may be considered abusive and dismissed under the
8 authority of 28 U.S.C. § 1915A. Cf. Cato v. United States, 70 F.3d 1103, 1105
9 n.2 (9th Cir. 1995) (citing Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir.
10 1988)) (duplicative in forma pauperis complaint may be considered abusive and
11 dismissed under 28 U.S.C. § 1915). Because plaintiff raised and litigated the
12 same allegations and claims raised herein in Grigsby v. Castellan, No. C 06-5494
13 CRB (PR), the instant complaint is deemed duplicative and abusive under §
14 1915A. That plaintiff may have added additional defendants in this later-filed
15 action does not compel a different result. See Bailey, 846 F.2d at 1021
16 (complaint repeating same allegations asserted in earlier case, even if now filed
17 against new defendants, is subject to dismissal as duplicative).

18 The complaint is DISMISSED as duplicative under the authority of 28
19 U.S.C. § 1915A(b). The clerk shall enter judgment in accordance with this order
20 and close the file.

21 SO ORDERED.

22 DATED: May 8, 2009


23 CHARLES R. BREYER
United States District Judge